IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Appeal From Order No. 733 of 2001
(Old No. 634 of 1998)

National Insurance Company Limited
Having its Divisional Office at
Mahatma Gandhi Marg, Allahabad
Through its Administrative Officer

…… Appellant

Versus

1. Janardan Kumar Masih
S/o Sri Gyan Chandra Masih,
C/o Smt. Rajeshwari Devi,
2 –D/3, Hauli Gali, Rajapur,
Allahabad.

…… Claimant – Respondent

2. Factory Manager, Polyplex Corporation Ltd.
Lohia Head Road, Khatima,
Udham Singh Nagar.

……. Respondent

Mr. Lalit Belwal, learned counsel for the appellant.
Mr. A.D. Tripathi, learned counsel for the respondent No.2

Hon'ble Prafulla C. Pant, J.

This appeal, preferred under Section 30 of the Workmen's Compensation Act, 1923, is directed against the judgment and award dated 31st march, 1988, passed by Assistant Commissioner (Labour) / Workmen Compensation Commissioner, Kumaon Division, Haldwani, Nainital, whereby in W.C.A. Case No. 30 of 1997, a claim of Rs. 1,14,528/- along with interest amounting to Rs. 16,034/- has been accepted and it has been directed to be paid by appellant Insurance Company to the Workman.

2) Heard learned counsel for the parties and perused the entire evidence on record. None appeared on behalf of respondent No. 1 / claimant, even after service.

3) Brief facts of the case are that, on 21/22.11.1993, during the course of employment the claimant / workman Janardan Kumar Masih received injuries. On said date, at about 7:00 A.M., he was working with his employer Polyplex Corporation Ltd. (respondent No. 2) over a machine. In the accident his right hand below the shoulders came under the machine and got fractured to the extent of 6 to 8 inches. It is also alleged by him that the workman was being paid Rs. 1,818/-, as salary per month by his employer, respondent No. 2. He claimed Rs. 38,000/- towards half salary payment and a lump sum payment of Rs. 75,000/- with 50% penalty and 6% interest thereon, by moving an application dated 14.01.1997.

4) The delay in filing the claim petition was condoned by the Workmen Compensation Commissioner, and the same was registered as W.C.A. Case No. 30 of 1997. The claim petition was contested by the employer of the workman and the Insurance Company with whom the factory was ensured. The employer Polyplex Corporation Ltd. pleaded in its written statement that the factory was ensured with National Insurance Company Ltd. vide policy No. 452002 / 41 / 86 / 0007 / 93 on the date of the accident. The employer further alleged that the salary of the workman (claimant) was only Rs. 1,760/- per month and his age was 25 years, at the time of the accident. However, it is admitted by the employer that the workman had received the injuries, as alleged by him, in the accident.

5) The Insurance Company (present appellant) contested the claim before Workmen Compensation Commissioner, denying the contents of the claim petition and also on the ground that the claim petition was barred by time. It further pleaded that Insurance Company is not liable to pay either penalty or the interest.

6) The Workmen Compensation Commissioner, after recording the evidence and hearing the parties, found that the accident had taken place on 21.11.1993. He further found that the salary of the workman was Rs. 1,760/-, at the time when the accident took place. The Workman Compensation Commissioner was satisfied as to the 50% permanent disability of the workman, certified by the Chief Medical Officer. He recorded the finding that the workman was 25 years of age at the time of the accident. After applying the norms applicable under the Workmen's Compensation Act, 1923, treating twelve months average salary as basis, the Workmen Compensation Commissioner awarded Rs. 1,14,528/- as compensation amount with interest amounting to Rs. 16,034/- to the workman. Aggrieved by which, this appeal has been preferred by the National Insurance Company Limited, before the Allahabad High Court in the year 1998, from where it has been received by transfer to this court, under Section 35 of the U.P. Re-organization Act, 2000, for its disposal.

7) After going through the evidence on record and hearing the parties, this Court is in agreement with the findings of the Workmen Compensation Commissioner that the workman Janardan Kumar Masih (claimant) suffered

injuries on 21.11.1993, during the course of employment. This Court is also in agreement with the finding of the Workmen Compensation Commissioner, on the basis of evidence on record, that it is established on the record that the workman was getting salary of Rs. 1,760/- per month, on the date of accident, from his employer respondent Ployplex Corporation Ltd. It is also admitted to the parties, that factory was ensured with the Insurance company, between the period 21.04.1993 to 20.04.1994. The appellant could not point out any illegality as to the calculation of the amount of compensation assessed by the Workmen Compensation Commissioner, after considering the age of the workman, disability of 50% and salary payable to him, on the date of accident.

8) Sri Lalit Belwal, learned counsel for the appellant, however, vehemently argued that the Insurance Company is not liable to pay interest at the rate of 12% per annum, awarded by the Workmen Compensation Commissioner, in the present case. In this connection, he contended before this Court that rate of 12% interest is payable w.e.f. 15th September, 1995, when the amendment was made in sub section (3) of Section 4-A in the Workmen's Compensation Act. On examination of the relevant provision of law, this Court found substance in the argument of learned counsel for the appellant. The interest payable prior to the amendment in sub section (3), was 6% per annum. Since, the accident took place on 21.11.1993 i.e. prior to 15.09.1995, where after in the enactment, the rate of interest payable was increased from 6% to 12% per annum. As such, in the present case, the Insurance Company or the employer is not liable to pay more than 6% interest per

annum. Therefore, to that extent, this appeal deserves to be allowed, partly.

9) For the reasons as discussed above, the appeal is allowed, partly. The award in respect of the amount of compensation to the tune of Rs. 1,14,528/- is affirmed. However, as to the amount of interest, the same is reduced from Rs. 16,034/- to Rs. 8,017/-, as prior to the amendment in Section 4-A of the Workmen's Compensation Act, 1923, the interest was payable at the rate of 6% per annum and not at the rate of 12% per annum, as awarded by the Workmen Compensation Commissioner. Out of the amount of Rs. 16,034/-, deposited by the appellant on account of interest on the awarded sum, the workman is entitled to an amount of Rs. 8,017/-. The appellant Insurance Company shall get refund of Rs. 8,017/-. Rest of the amount may be withdrawn by the claimant / workman. Costs easy. (All other pending applications in this Appeal also stand disposed of).

(Prafulla C. Pant, J.)

Dt. 31st August, 2006.
H.Negi